PROSPERITY NOW

February 16, 2021

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1723

Advance Notice of Proposed Rulemaking on an approach to modernize regulations that implement the Community Reinvestment Act

To Ann. E. Misback,

Prosperity Now is pleased to submit comments on the Board of Governors of the Federal Reserve System's Advance Notice of Proposed Rulemaking on an approach to modernize regulations that implement the Community Reinvestment Act (CRA). We appreciate the opportunity to share what we like about the proposal and how we think it could improve.

Prosperity Now is a national, nonpartisan nonprofit organization based in Washington, D.C. that works to expand economic opportunity for all Americans by promoting and advocating for asset-building policies and programs. A part of our work focuses on access to credit and homeownership, which has long been the primary way for families to build wealth in the United States.

It has been more than a quarter century since the CRA regulatory framework was updated; therefore it is important that the regulators get it right. Before we discuss the current proposal, we must make clear that we oppose the Office of the Comptroller of the Currency (OCC) finalizing rules amending the CRA without the support of the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System (the Fed), the two other banking agencies responsible for overseeing CRA implementation. The OCC rule and the Fed proposal differ in significant ways. By moving forward without a shared vision as to how the CRA should be modernized, banks regulated by one agency will be evaluated by a different framework than those overseen by a different one, creating confusion, and resulting in banks, and the communities they serve, being treated unequally.

The CRA was enacted to make sure low-income and other underserved communities have access to bank products and services, and while the Fed

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proposal needs improvement in some areas, it is much better at honoring this mission than the OCC rule. We also approve of how the Fed proposal more carefully takes into consideration local needs and allows for business cycle adjustments. Given this, we think a coordinated interagency approach to CRA modernization should build on the Fed proposal rather than adopting the OCC rule.

Below, we outline the strengths of the Fed approach to CRA modernization as well as the opportunities to make the proposal more effective:

Bank Branches are Essential. While we welcome the request for feedback on how the increased use of non-branch banking services like mobile banking should be assessed, we are extremely pleased to see the proposal maintains bank branch assessment areas. Despite the shifts in banking practices, bank branches continue to play a critical role in providing financial products and services to consumers, particularly underserved low-income and rural households. Likewise, we think giving additional consideration to a bank if they operate a branch in a banking desert is a good idea. Regulators will need to define "banking desert," a term widely used but without standardization. Increased branch presence, if managed safely and soundly, would benefit underserved communities that need more access to banking products and services.

The Number of Loans is a Better Measure of CRA Activity and Compliance than Total Dollar Amounts. In its proposal on retail lending, the Fed proposal considers the quantity of loans and other eligible services to determine whether a bank meets this CRA obligation. This is a significant improvement over the OCC's "single-metric" ratio, which relies on the overall dollar amount of all CRA activity divided by a bank's deposits. As we mentioned in our comment letter to the OCC , the OCC approach encourages banks to focus on funding a finite number of high-dollar loans or financing transactions rather than trying to service a higher number of underserved households and businesses with smaller dollar financial products. For example, most manufactured home loans are considered small dollar loans. That market is considerably restricted, with relatively few lenders making most such loans. A well-designed CRA rule could help build a more competitive market. The market for small dollar mortgages and business loans is underserved by many measures. Incentivizing such lending through CRA compliance will likely result in more capital flowing in low- and moderate-income communities.

One direct result of the growing disconnect between lenders and small-dollar borrowers has been the challenges that many small firms, especially those owned by people of color and those that serve their communities, faced in the initial round of the Paycheck Protection Program. Prosperity Now and others have documented these challenges; a well-designed CRA rule could help prevent a replay of this lack of access to resources in the next crisis.

We also prefer the separate retail and community development tests (with lending and services subtests), and the more flexible rating system to the oversimplified pass/fail approach the OCC takes.

The Asset Threshold for Small Banks should not be Increased. We think the thresholds under consideration for defining the size of a small bank are too high. Under the proposal, banks with assets equal to or less than $750 million or $1 billion would be considered small, while those with more would be defined as large. Currently, small banks are defined as those with assets of $326 million or less. Significantly increasing the threshold in this manner reduces the number of banks that would be required to provide financing for important community development projects like affordable housing, since banks defined as small are only subject to the retail lending test.

The Number of Subtest Ratings should not be Reduced. We are not convinced that the number of possible ratings on the subtests used to gauge performance should be reduced from five to four. Currently, 90% of banks receive a final rating of Satisfactory, an extremely high percentage that does little to inform the public and banks on how they compare with each other and where there is room for improvement. Moreover, such a high passage rate discourages banks from finding more and better ways to support underserved markets. Instead of removing a rating, the Fed should consider defining the ratings that do exist with more precision in a way that leads to greater distinctions among ratings and fewer banks receiving the same rating. Indeed, a more defined and rigorous approach to measurement, ratings and consequences would make the Fed proposal stronger on all fronts. It improves clarity, makes comparisons easier and motivates banks to build out their footprints to serve more underserved areas.

Impact Scores are Beneficial. We think the idea of building on the practice of examining data to determine whether a particular project is truly a community development activity by assigning these investments an impact score of between 1-3 (with 3 as the highest) is a promising approach. Having an impact score complement the quantitative community development measurements allows a bank to be rewarded for more than the dollar values of the community development projects they fund. It helps determine the extent to which these projects effectively address needs in the communities they are required to service.

More Clearly Define What Constitutes Eligible Community Development Activities. To create more transparency and greater certainty for banks about what lending and investment activities meet their CRA obligations, we think there is value in putting together a non-exhaustive list of what community development activities would count on a CRA examination. However, it would be prudent to put this list together thoughtfully. Depending on the context, some activities are more impactful than others and finding a way to assist banks with prioritizing projects as well as making the list not too burdensome would be useful. As far as specific activities, having financial education count for all income levels is not the right approach. It would be best to only count low-income households with the greatest needs for these services to make the best use of limited resources. Finally, we prefer the Fed proposal's approach to infrastructure over the OCC final rule. Unlike the OCC, the Fed makes it clear that infrastructure projects must directly, not partially, benefit low-income communities.

The Fed should also consider leveraging other community development statutes and regulations to encourage CRA activities. For example, since 2008, Fannie Mae and Freddie Mac, the government-sponsored enterprises, currently under conservatorship, have had a duty to serve certain underserved housing markets, including manufactured housing, rural housing, and housing preservation. Although the Enterprises' Duty to Serve products and services remain a small share of their overall product mixes, they have potential to drive credit to worthy borrowers. In addition, since, 1992, the Enterprises have had obligations to meet affordable housing goals. While a growing share of mortgage loans are made by non-bank lenders, many CRA-regulated banks originate loans as seller/servicers for Fannie Mae and Freddie Mac. A well-designed regulation that designates as CRA activities loans made in compliance with the GSE Affordable Housing and Duty to Serve programs would help direct credit to underserved markets. For example, 2019 data from the Home Mortgage Disclosure Act (HMDA), show that many manufactured home loan borrowers purchase such homes with personal property loans, and often at interest rates 400 basis points higher than the typical mortgage interest rate they may be eligible for. Good CRA rulemaking could help shift this market failure.

Fair Lending Continues to be Important. We are pleased to see that the Fed's proposal continues to take fair lending violations seriously by indicating that such conduct could lead to a ratings downgrade. For the sake of clarity, we also agree with the recommendation that the violations of the Military Lending Act, the Servicemembers Civil Relief Act, and the prohibition again unfair, deceptive, or abusive acts or practices (UDAAP) are explicitly listed as grounds for downgrading a rating. As strong proponents of minority depository institutions, women-owned financial institutions and community development credit unions, we also welcome the recommendation to encourage banks to engage with them more through the ratings process, as long as it does not incentivize banks to off-load their own CRA obligations onto these institutions. We also think an increased focus on underserved areas by making them a criteria on subtests, as our colleagues at the National Community Reinvestment Coalition (NCRC) have proposed, would also be beneficial to communities of color.

Thank you again for allowing Prosperity Now to comment on the Advance Notice of Proposed Rulemaking on an approach to modernize regulations that implement the Community Reinvestment Act that was proposed by the Board of Governors of the Federal Reserve System. If you have any questions, please feel free to contact Doug Ryan at dryan@prosperitynow.org or at 202-207-0155.

Sincerely,

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